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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

PATRICK CHARLES CURTIS,

Defendant and Appellant.

C063764

(Super. Ct. No.
S07CRF0325)

Defendant Patrick Charles Curtis drove drunk and hit a telephone pole, injuring his passenger. He pled guilty to felony driving under the influence of alcohol with injury (Veh. Code, § 23153, subd. (a)) and to driving on a license suspended for driving under the influence of alcohol or drugs (Veh. Code, § 14601.2, subd. (a)). He also admitted a great bodily injury enhancement (Pen. Code, § 12022.7, subd. (a)) and a prior drunk driving conviction.

The court ordered restitution to the victim in the amount of \$77,393.45. On appeal, defendant contends, and the People concede, that the trial court erred in refusing to reduce the

restitution award by \$25,000, the settlement amount recovered by the victim from defendant's insurance carrier.

We agree with the parties that the victim restitution order in this action should have been reduced by money the victim received in settlement from the defendant's insurance carrier.

DISCUSSION

"[A] victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime." (Pen. Code, § 1202.4, subd. (a)(1).) Thus, "unless it finds compelling and extraordinary reasons for not doing so," the court in a criminal proceeding must require the defendant to make "full restitution" to a victim "in an amount established by court order, based on the amount of loss claimed by the victim . . . or any other showing to the court." (Pen. Code, § 1202.4, subd. (f).) A restitution order is reviewed for abuse of discretion, "but 'a restitution order "resting upon a "demonstrable error of law"' constitutes an abuse of the court's discretion.'" [Citations.]" (*People v. Duong* (2010) 180 Cal.App.4th 1533, 1537.)

Even when a victim obtains a settlement from a company that insured the defendant for civil liability, the court in a criminal action may order the defendant to pay victim restitution. This is so because the victim "might rationally choose to accept an insurance settlement for substantially less than his or her losses rather than risk the uncertain . . . possibility that the defendant will pay the entire restitution

amount" (*People v. Bernal* (2002) 101 Cal.App.4th 155, 163 (*Bernal*)), and the "victim's willingness to accept the [insurance settlement] in full satisfaction for all civil liability . . . does not reflect the willingness of the People to accept that sum in satisfaction of the defendant's rehabilitative and deterrent debt to society" (*id.* at p. 162).

But "when the victim has obtained a settlement payment from a company that insured the defendant for civil liability, the amount of the restitution order in a criminal action must be offset by money paid to the victim by the insurance company." (*People v. Short* (2008) 160 Cal.App.4th 899, 903; see *Bernal*, *supra*, 101 Cal.App.4th at pp. 165-168.) The relationship between the defendant and the insurance company is such that the victim is deemed to have received the civil settlement payment ""directly from the defendant"" within the meaning of Penal Code section 1202.4, subdivision (a)(1). (*Short*, *supra*, 160 Cal.App.4th at p. 903.)

The trial court erred in relying upon *Bernal*, *supra*, 101 Cal.App.4th 155 to reach a contrary result. The defendant in *Bernal* was convicted of driving under the influence of alcohol and causing great bodily injury; the victim received a \$15,000 settlement payment from the defendant's insurer in exchange for a release of liability given to the insurer and the defendant. (*Id.* at p. 158.) After holding that the trial court erred by finding that the civil release acted as a bar to restitution under Penal Code section 1202.4 (*Bernal*, at pp. 160-164), the appellate court concluded that the defendant on remand

would be entitled to an offset to any restitution obligation determined by the court (*id.* at p. 168).

DISPOSITION

The victim restitution order is vacated, and the matter is remanded to the trial court to enter a restitution order that takes into account defendant's entitlement to an offset in the amount of the settlement paid by his insurance carrier to the victim.

RAYE, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.